Eskimo Radiator Mfg. Co. *and* Teamsters Automotive Workers Local 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 21-CA-19330

March 26, 1981

DECISION AND ORDER

Upon a charge filed on July 25, 1980, by Teamsters Automotive Workers Local 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, herein called the Union, and duly served on Eskimo Radiator Mfg. Co., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint on August 29, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on July 10, 1980, following a Board election in Case 21-RC-16167, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about July 24, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On September 10, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On October 24, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on October 28, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed an opposition to the Motion for Summary Judgment.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits the procedural and jurisdictional allegations of the complaint and admits most of the operative factual allegations but denies (a) that the Union has been, and is now, the exclusive representative of Respondent's employees in an appropriate unit; (b) the Union's postcertification request for bargaining; (c) its own refusal to bargain with the Union; (d) the allegation that certain information requested by the Union concerning the present terms and conditions of employment of employees in the certified unit is necessary and relevant to the Union's collective-bargaining functions;[2] (e) that it has failed and refused to supply this information; and (f) that its refusal to bargain and refusal to supply information are violations of Section 8(a)(5) and (1) of the Act.[3] In its answer, Respondent also alleges certain affirmative defenses in which it contends that: (1) the Regional Director improperly recommended that each of its objections to the election be overruled; (2) the Board erroneously sustained the Regional Director's recommendation that Objection 5, which alleged that one of the Board agents conducting the election encouraged Respondent's employees to vote for the Union, be overruled; and (3) the Board failed to respond to its exceptions to the Regional Director's recommendation that Objection 3, which alleged that union agents' preelection threats of physical harm to Respondent's employees had created an atmosphere of fear and

[1] Official notice is taken of the record in the representation proceeding, Case 21-RC-16167, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] The information requested included the following:

List of all employees.
Seniority dates of all employees.
Rate of pay of all employees.
List of all classifications, including the minimum and maximum rate ranges.
Minimum and maximum wages per hour and the rate range of each employee and also method of progression.
A copy of the insurance plan (including the amount the Company pays and the amount the employee pays).
The number of paid holidays in effect at the plant.
Pension plan or severance plan, if any.
Requirements and amount of vacation.
Incentive plan, if any.
Night shift premium.
Any other benefit or privilege that the employees now receive.

[3] To the extent that in these denials, Respondent is denying that it was requested to bargain, that it refused to bargain, and that it refused to supply the requested information, we note the following. The Motion for Summary Judgment includes: (a) two letters, dated July 17, 1980, and September 17, 1980, from the Union to Respondent in which the Union formally requested Respondent to bargain and sought certain information on the unit employees; and (b) two letters, dated July 31, 1980, and September 29, 1980, from Respondent to the Union, in which Respondent acknowledged receipt of the Union's request to bargain but refused to bargain. The letters also did not supply the requested information sought by the Union. Respondent has not denied the authenticity of these documents; accordingly, we find the relevant complaint allegations involving them to be established as true. We do note, however, that while the complaint alleges Respondent's various refusals to bargain from July 24, 1980, the letters referred to above support a factual finding that this refusal occurred on and after July 31, 1980.

reprisal, be overruled. In its opposition to the summary judgment motion, Respondent argues that it was entitled to a hearing on its objections; that the Board failed to consider its Objection 3 since no mention of that objection was made in the Board's Decision and Certification of Representative of July 10, 1980, and that summary judgment is inappropriate since it is based on "Board agents' participation in an adjudicative agency decision in violation of Section 5(d) of Section 5(a) of the Administrative Procedure Act." General Counsel argues that Respondent's contentions are without merit and we agree.

Review of the record herein, including the record in Case 21-RC-16167, reveals that pursuant to a Stipulation for Certification Upon Consent Election, an election was held on February 22, 1980. The tally of ballots disclosed that there were 73 votes for the Union, and 70 votes against the Union. There were no challenged ballots. Thereafter, on February 29, 1980, Respondent filed timely objections to the election alleging, *inter alia*, that during the preelection period the Union, by its agents, made threats of physical harm to Respondent's employees, thus creating an atmosphere of fear and reprisal (Objection 3), and alleging that one of the Board agents at the election encouraged Respondent's employees to vote for the Union (Objection 5). On April 10, 1980, the Regional Director issued his Report on Objections in which he recommended overruling Respondent's Objections in their entirety and recommended that a Certification of Representative be issued to the Union. With respect to Objection 3, the Regional Director found that the evidence presented failed to establish that any of the employees, who allegedly threatened to beat up those who did not vote for the Union, were agents of Petitioner. He further found that the statements relied on by Respondent in support of that contention were hearsay, vague, and fell short of establishing the requisite atmosphere of confusion and fear essential to setting aside election. With respect to Objection 5, the Regional Director found that the evidence presented concerning a Board agent's alleged interference with employee free choice in voting revealed, at most, only an apparent misunderstanding by one voter of the agent's explanation to him of how to mark the ballot, and this was insufficient evidence to establish the "reasonable possibility of irregularity requisite to setting the election aside."

Subsequently, on May 1, 1980, Respondent filed exceptions to the Regional Director's report. Respondent excepted to the Regional Director's overruling of Objections 3 and 5 and failure to conduct a hearing on these objections. On July 10, 1980, the Board issued a Decision and Certification of Representative,[4] adopting, *pro forma*, in the absence of exceptions, the Regional Director's recommendation to overrule Objections 1, 2, and 4; adopting without comment, the Regional Director's overruling of Objection 3; and adopting, for reasons other than those relied on by the Regional Director, his overruling of Objection 5.

On July 30, 1980, Respondent filed with the Board a Motion for Reconsideration arguing that the Board failed to respond to Respondent's Objection 3 in its Decision and Certification of Representative. On September 5, 1980, the Board denied Respondent's motion as lacking merit, and containing nothing not previously considered. The Board noted in its order that with regard to Objection 3, it had adopted the Regional Director's findings and recommendations in that respect.

As noted, in its answer to the complaint, Respondent alleges that the Regional Director erred in recommending that "each of [its] Objections" be overruled, and erred specifically in recommending that Objections 3 and 5 be overruled. In its opposition to the summary judgment motion, Respondent reiterates its contention that "the Board erred in failing to consider" Objection 3 in its Decision and Certification of Representative. These are contentions clearly raised and decided adversely to Respondent in the underlying representation proceeding. Respondent also alleges it is entitled to a hearing on its Objections 3 and 5. This argument was raised before, and rejected without comment by the Board, in the underlying proceeding. It is well established that a party is not entitled to a hearing on objections absent a showing of substantial and material issues.[5] The Board has held, with judicial approval, that evidentiary hearings are not required in unfair labor practice cases and that summary judgment is appropriate where, as here, there are no substantial or material facts to be determined.[6] Accordingly, Respondent is not entitled to a hearing on its objections. Equally without merit is Respondent's contention that the Region's and/or the Board's actions in the underlying representation proceeding were in violation of the Administrative Procedure Act.

It therefore appears that in this proceeding Respondent is attempting to relitigate issues fully litigated and finally determined in the representation proceeding.[7] All issues raised by Respondent in

[4] Not reported in bound volumes of Board decisions.

[5] *National Beryllia Corporation*, 222 NLRB 1289 (1976), and cases cited therein.

[6] *Handy Hardware Wholesale, Inc.*, 222 NLRB 373 (1976), and cases cited therein.

[7] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we find that Respondent has at all times material herein refused to recognize and bargain with the Union, upon request, and that its refusal to do so is violative of Section 8(a)(5) and (1) of the Act.

In this proceeding, Respondent also denies that the employment information sought by the Union is relevant and necessary to the Union's collective-bargaining function, and defends its refusal to furnish the requested information pertaining to the bargaining unit employees on the ground that it has no obligation to supply the requested information. As for Respondent's denial of the relevancy of the information requested, we note it is settled that wage, fringe benefit, and employment data concerning bargaining unit employees are presumptively relevant for the purposes of collective bargaining, and must be provided upon request to the employees' bargaining representative.[8] It is also well settled that a union is not required to show the precise relevance of such information unless the employer has submitted evidence sufficient to rebut the presumption of relevance.[9] Here, Respondent has not attempted to rebut by proffer of proof the relevance of the information sought by the Union. Rather, Respondent simply contends that it is under no obligation to supply that information. However, since the Union is the employees' designated bargaining representative, Respondent's contention is in error. Accordingly, we find that no material issues of fact exist with regard to Respondent's refusal to furnish the employment data sought by the Union through its letter of July 17, 1980, and that its refusal to do so violated Section 8(a)(5) and (1) of the Act.

[8] *Western Electric, Inc.*, 225 NLRB 1374 (1976); *Hotel Enterprises, Inc., d/b/a Royal Inn of South Bend*, 224 NLRB 810 (1976); *Warehouse Foods, A Division of M.E. Carter and Company, Inc.*, 223 NLRB 506 (1976); *Building Construction Employers Association of Lincoln, Nebraska, et al.*, 185 NLRB 34 (1970); *Cowles Communications, Inc.*, 172 NLRB 1909 (1968); *Curtiss-Wright Corp.*, 145 NLRB 152 (1963), enfd. 347 F.2d 61 (3d Cir. 1965).

[9] *Curtiss-Wright Corp., supra*, 347 F.2d at 69. Thus, if the information is of potential or probable relevance, the General Counsel need not make a showing that the information sought is clearly dispositive of the negotiation issues between the parties. See *Western Massachusetts Electric Company*, 228 NLRB 607 (1977).

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Eskimo Radiator Mfg. Co. is a California corporation engaged in the business of manufacturing radiators in Los Angeles, California. During the 12-month period preceding issuance of the complaint, it sold and shipped goods valued in excess of $50,000 directly to customers located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters Automotive Workers Local 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, shipping and receiving employees and warehousemen employed by the Employer at its facilities at 6309 South Central Avenue, Los Angeles, California, and at 901 East 62nd Street, Los Angeles, California; excluding all truckdrivers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On February 22, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 21, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 10, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and To Furnish Relevant Information and Respondent's Refusal*

Commencing on or about July 17, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about July 31, 1980, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit, and has refused to furnish the Union information relevant to collective bargaining.

Accordingly, we find that Respondent has, since July 31, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order that Respondent, upon request, furnish the Union the information requested in its letter of July 17, 1980.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Eskimo Radiator Mfg. Co. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters Automotive Workers Local 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, shipping and receiving employees and warehousemen employed by the Employer at its facilities located at 6309 South Central Avenue, Los Angeles, California, and at 901 East 62nd Street, Los Angeles, California; excluding all truckdrivers, office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 10, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 31, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about July 31, 1980, and at all times material thereafter, to bargain collectively with the above-named labor organization as the exclusive representative of all employees of Respondent in the appropriate unit by refusing to furnish the said labor organization with information concerning the present terms and conditions of employment of the employees in the above-described unit, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has en-

gaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Eskimo Radiator Mfg. Co., Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Teamsters Automotive Workers Local 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees, shipping and receiving employees and warehousemen employed by the Employer at its facilities located at 6309 South Central Avenue, Los Angeles, California and at 901 East 62nd Street, Los Angeles, California; excluding all truck drivers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Refusing to bargain collectively with the above-named labor organization by refusing to furnish the said labor organization with information concerning the present terms and conditions of employment of the employees in the above-described unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, bargain collectively with the above-named labor organization by furnishing it with information concerning present terms and conditions of employment requested in its letter of July 17, 1980.

(b) Post at its facilities at 6309 South Central Avenue, Los Angeles, California, and at 901 East 62d Street, Los Angeles, California, copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Teamsters Automotive Workers Local 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to bargain collectively with the above-named labor organization by refusing to furnish it with the information concerning present terms and conditions of employment it has requested with respect to the employees in the unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding

is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees, shipping and receiving employees and warehousemen employed by us at our facilities located at 6309 South Central Avenue, Los Angeles, California and at 901 East 62nd Street, Los Angeles, California; excluding all truck drivers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, upon request, bargain collectively with the above-named labor organization by furnishing it with the information requested in its January 16, 1980, letter.

ESKIMO RADIATOR MFG. CO.